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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/649,973	08/29/2000	Norbert George Vogl	YOR920000532US1	9168

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EXAMINER

BAROT, BHARAT

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/649,973

Applicant(s)

VOGL ET AL.

Examiner

Bharat N Barot

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 06/07/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

RESPONSE TO AMENDMENT

1. Claims 1-19 remain for further examination.

The new grounds of rejection

2. Applicants' amendments and arguments with respect to claims 1-19 filed on June 07, 2004 have been fully considered but they are deemed to be moot in view of the new grounds of rejection.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-11 and 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takamoto et al (U.S. Patent No. 5,903,724) in view of Sherer et al (U.S. Patent No. 5,875,175).

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5. As to claim 1, Takamoto et al teach a method of doing business over a network (see abstract; and figures 1-2) comprising the steps of: receiving a request for transmitting digital information, the digital information having a number of packets; determining the time required to transmit the digital information; scheduling a transmit time for the digital information; and accepting the digital information for transmission (figures 2, 9, and 15-17; column 6 line 65 to column 7 line 10; column 8 lines 13-36; and column 11 line 22 to column 12 line 54).

However, Takamoto et al do not teach the steps of: receiving, determining, scheduling, and accepting with specific conditions.

Sherer et al teach a method of doing business over a network (see abstract; and figures 3A-3B) comprising the steps of: receiving a request for transmitting digital information after a start time and before an end time, the digital information having a number of packets (figures 3B and 4; column 3 line 54 to column 4 line 3; column 6 line 40 to column 7 line 11; column 9 lines 15-31; and column 11 lines 6-18); determining the time required to transmit the digital information based on the number of packets and a network speed; scheduling a transmit time for the digital information (figures 3A-3B; column 3 lines 26-53; and column 5 line 1 to column 6 line 39); and accepting the digital information for transmission only if the time required to transmit is less than or equal to the difference between the transmit time and the end time (column 9 lines 32-40; and column 9 line 61 to column 10 line 26).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Sherer et al stated above in the

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method of Takamoto et al for doing business over a network as stated above because it would have optimized network performance and increased system efficiency by scheduling a transmit time for the digital information.

6. As to claims 2-3, Sherer et al disclose that the digital information is transmitted at a first price or the digital information is rejected for transmission if the time required to transmit is more than the difference between the transmit time and the end time (figure 3A-3B; and column 9 lines 16-40).

7. As to claims 4-5, Takamoto et al disclose that the digital information is accepted for transmission at a second price; and the digital information is rescheduled by the scheduler and accepted for transmission at a second price after the information is rejected (figures 18-20; and column 12 line 55 to column 14 line 10).

8. As to claims 6-7, Takamoto et al disclose that receives an acknowledgment of the transmission (see summary of the invention; figures 2-3; and column 7 lines 10-63).

However, Takamoto et al do not disclose that produces a bill on receipt of the acknowledgment, but it would have been obvious and known to one of ordinary skill in the art at the time the invention was made to produces a bill on receipt of the acknowledgment (after providing a service) because it would have improved system management to determine the cost of network usage.

9. As to claims 8-10, Takamoto et al disclose that one or more portions of the digital information are accepted for transmission and are transmitted; and receives an acknowledgment of the transmission of one or more of the portions (see summary of the invention; figures 2-3; and column 7 lines 10-63).

However, Takamoto et al do not disclose that produces a bill on receipt of the acknowledgment for one or more of the portions, but it would have been obvious and known to one of ordinary skill in the art at the time the invention was made to produces a bill on receipt of the acknowledgment for one or more of the portions (after providing a service) because it would have improved system management to determine the cost of network usage.

10. As to claim 11, Takamoto et al disclose that one or more portions of the digital information are initially rejected and then accepted for transmission at one or more second times and at one or more second prices (figures 18-20; and column 12 line 55 to column 14 line 10).

11. As to claim 16, Sherer et al disclose that the digital information is scheduled from one or more retransmissions if the time required to transmit is more than the difference between the transmit time and the end time (figures 4A-4B; and column 6 line 12 to column 7 line 47).

12. As to claim 17, Takamoto et al disclose that the digital information is scheduled from one or more retransmissions if no acknowledgment of the transmission of the digital information is received (figures 18-20; and column 12 line 55 to column 14 line 10).

13. As to claims 18-19, Sherer et al disclose that the digital information is also not transmitted if one or more criteria are not met, where the criteria include any one or more of the following: a file size, a release time, a deadline, zero or more recipients, zero or more user locations, an acknowledgment, a negative acknowledgment, a partial acknowledgment, a bandwidth, a quality of service, a retransmission count, and a retransmission schedule (column 3 lines 25-53; column 5 line 1 to column 6 line 39; and column 9 lines 16-40).

14. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takamoto et al (U.S. Patent No. 5,903,724) in view of Sherer et al (U.S. Patent No. 5,875,175) as applied to claim 1 above, and further in view of Duquesnois et al (U.S. Patent No. 6,564,382).

15. As to claims 12-13, neither Takamoto et al nor Hamai et al discloses that the request has one or more priorities; the priority is that the digital information is transmitted within a time period.

Duquesnois et al disclose that the request has one or more priorities; the priority is that the digital information is transmitted within a time period (see abstract; column 2 lines 1-14 and 38-59; column 4 lines 44-52; and column 8 lines 5-21).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Duquesnois et al stated above in the method of Takamoto et al for doing business over a network as stated above because it would have increased over all system efficiency and performance.

16. As to claims 14-15, Duquesnois et al disclose that the time period in any one or more of the following: over night, two days, and one week, and the priority is a freight priority that requires the digital information to be transmitted within a freight time period with no acknowledgments (see abstract; column 2 lines 1-14 and 38-59; column 4 lines 44-52; and column 8 lines 5-21).

Additional Reference

17. The examiner as of general interest cites the following reference.

- a. Johnson, Jr., U.S. Patent No. 5,640,504.

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Contact Information

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bharat Barot whose telephone number is (703) 305-4092. The examiner can normally be reached on Monday-Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alam, Hosain, can be reached at (703) 308-6662. A central official fax number is (703) 872-9306.

Any inquiry of general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 305-3900.

Patent Examiner Bharat Barot

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September 08, 2004

Bharat Barot
**BHARAT BAROT
PRIMARY EXAMINER**